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SERVICE DATE – MARCH 7, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 261X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
SPARTANBURG, SC

Decided: March 6, 2006

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.92-mile line of railroad between former milepost W 68.69 and former milepost W 70.61, in Spartanburg, SC.<sup>1</sup> Notice of the exemption was served and published in the Federal Register on July 20, 2005 (70 FR 41813-14).<sup>2</sup> The exemption became effective on August 19, 2005.

By decision and notice of interim trail use or abandonment (NITU), served on August 18, 2005, the proceeding was reopened and a 180-day period was authorized for the Palmetto Conservation Foundation (PCF) to negotiate an interim trail use/rail banking agreement with NSR for the right-of-way in this proceeding. The negotiating period under the NITU expired on February 15, 2006.<sup>3</sup>

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<sup>1</sup> According to NSR, the line mileposts are described as former because a new main line replaced the subject line as the main line many years ago and that the construction of the new main line resulted in the subject line becoming a stub-end branch line. NSR also states that the milepost numbers were reused on the new line and no new milepost designations were given to the subject line.

<sup>2</sup> The Federal Register notice published on July 20, 2005, was corrected by Federal Register notice published on August 3, 2005 (70 FR 44719), to reflect the correct United States Postal Service Zip Codes 29302 and 29306.

<sup>3</sup> The August 18, 2005 decision and notice also imposed one environmental condition and a public use condition. The environmental condition remains in effect. The public use condition, which is limited by statute to 180 days, expired on February 15, 2006, and may not be extended.

On February 15, 2006, PCF filed a request to extend the NITU negotiating period until August 15, 2006.<sup>4</sup> PCF states that the parties need additional time to finalize negotiations. NSR consents to PCF's extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended.<sup>5</sup> Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended for an additional 180 days, from February 16, 2006, to August 15, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended to August 15, 2006.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>4</sup> PCF's request was originally submitted without a filing fee. A filing fee was received on February 15, 2006. Therefore, February 15, 2006, will be used as the official filing date for PCF's extension request. Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, TX, Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).

<sup>5</sup> See Rail Abandonments—Supplemental Trails Act Procedures, 4 I.C.C.2d 152, 157-58 (1987).